

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
& SERVICE WORKERS INTERNATIONAL UNION
(USW), AFL-CIO, CLC, LOCAL 5000**

and

Case 8-CC-1812

AMERICAN STEAMSHIP COMPANY

DECISION AND ORDER

Statement of the Case

On December 3, 2010, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (USW), AFL-CIO, CLC, Local 5000 (the Respondent), American Steamship Company (the Charging Party), and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Employer's business

At all material times, the Charging Party, a New York corporation, with an office and place of business in Williamsville, New York, has been engaged in the business of providing marine transportation services to customers throughout the Great Lakes

Region, including the transport of coal to the Norfolk Southern Railway Company (Norfolk Southern), at its marine dock facility located at Ashtabula Harbor, Ashtabula, Ohio (the Ashtabula Coal Pier), which is the only location involved in this proceeding.

Annually, in the course and conduct of its business within the State of Ohio described above, the Charging Party derives gross revenues in excess of \$50,000, of which in excess of \$50,000 was from Norfolk Southern.

Based on its operations described above, the Charging Party functions as an essential link in the transportation of freight in interstate commerce.

At all material times, Norfolk Southern, a Virginia corporation, with offices and places of business in Sandusky, Ohio and Ashtabula, Ohio, and with its principal office and place of business in Norfolk, Virginia, has been engaged in transloading coal from ports along Lake Erie within the State of Ohio.

During the past 12 months, Norfolk Southern, in conducting its business operations described above, derived gross revenues in excess of \$50,000 and, during the same period, transported freight valued in excess of \$50,000 from the State of Ohio, including the Ashtabula Coal Pier, directly to points outside the State of Ohio.

At all material times, the Charging Party and Norfolk Southern have each been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) and 8(b)(4) of the Act.

2. The labor organization involved

At all material times, the Respondent has been a labor organization within the meaning of Sections 2(5) and 8(b)(4) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (USW), AFL-CIO, CLC, Local 5000, its officers, agents, and representatives shall:¹

1. Cease and desist from:

¹ In accordance with standard Board practice, the Order has been corrected to substitute “representatives” for “successors and assigns” because the Respondent is a labor organization rather than an employer.

(a) Inducing or encouraging, by picketing, individuals employed by the Norfolk Southern Railway Company or any other person engaged in commerce, or an industry affecting commerce, to engage in a work stoppage or refusal to perform labor or services; and

(b) Threatening, coercing, or restraining the Norfolk Southern Railway Company, or any other person engaged in commerce or in an industry affecting commerce, where an object is to force or require them, or any other person engaged in commerce or in an industry affecting commerce, to cease handling or otherwise dealing in the services of, or to cease doing business with, the Charging Party, or any other person engaged in commerce or an industry affecting commerce.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days of service by the Region, post at its business office in Ashtabula, Ohio, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's representative, shall be posted by the Respondent and be maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for Region 8 signed copies of the notice for posting, if the Norfolk Southern Railway Company is willing, at the Norfolk Southern Railway Company's Ashtabula, Ohio facility, in places where notices to employees are customarily posted. Copies of the notice, on forms provided by the Regional Director for Region 8, after having been signed by the Respondent's representative, shall be forthwith returned to the Regional Director for such posting by the Norfolk Southern Railway Company.

(c) Mail signed copies of the attached notice, at its own expense, to the bargaining unit of the Charging Party's employees who are represented by the Respondent. The notice shall be mailed to the last known address of each employee after being signed by the Respondent's authorized representative.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 8 a sworn certification of a responsible official attesting to the steps that the Respondent has taken to comply with the Board Order, including the date and to whom the attached notice was mailed.

Dated, Washington, D.C., February 7, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A
CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF
APPEALS.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join or assist a union
Choose representatives to bargain with your employer on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT, in any manner or by any means, induce or encourage Norfolk
Southern Railway Company, or any individual employed by any person engaged in
commerce or an industry affecting commerce, to engage in a strike or a refusal to
perform services, where an object of ours is to force or require Norfolk Southern
Railway Company, or any other individual or person engaged in commerce, to cease
doing business with American Steamship Company, or any other person.

WE WILL NOT, by picketing or any other means, threaten, coerce, or restrain Norfolk
Southern Railway Company, or any individual employed by any person engaged in
commerce or an industry affecting commerce, where an object of ours is to force or
require Norfolk Southern Railway Company, or any other individual or person engaged
in commerce, to cease doing business with American Steamship Company, or any
other person.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of
your rights under Section 7 of the National Labor Relations Act.

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL &
SERVICE WORKERS INTERNATIONAL UNION
(USW), AFL-CIO, CLC, LOCAL 5000

(UNION)

Dated: _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.